

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT TAYLOR, Mayor, City of Roseville;
DOUGLAS R. ALEXANDER, City Manager, City of
Algonac; MATTHEW BIERLEIN, County
Commissioner, Tuscola County; DONALD LYONS,
Mayor, City of Dowagiac; TODD R. ROBINSON,
Superintendent, New Haven Community Schools;
RUSSELL PICKELL, Superintendent, Riverview
Community Schools; GARY O'BRIEN, School Board
President, Riverview Community Schools; KELLY
COFFIN, Superintendent, Tecumseh Public Schools;
KIMBERLY AMSTUTZ-WILD, School Board President,
Tecumseh Public Schools; KEITH WUNDERLICH,
Superintendent, Waterford School District; ROBERT
SEETERLIN, School Board President, Waterford School
District; MICHELLE IMBRUNONE, Superintendent,
Goodrich Area Schools; DAVID P. PRAY,
Superintendent, Clinton Community Schools; PATRICIA
MURPHY-ALDERMAN, Superintendent, Byron Area
Schools; AMY LAWRENCE, School Board President,
Byron Area Schools; ROBERT D. LIVERNOIS,
Superintendent, Warren Consolidated School District;
YVONNE CAAMAL CANUL, Superintendent, Lansing
School District, *in their individual and official capacities*;
and STEPHEN PURCHASE, *in his individual capacity*.

Plaintiffs,

v.

RUTH JOHNSON, in her official capacity as Secretary of
the State of Michigan; and the STATE OF MICHIGAN,

Defendants.

No. 2:16-cv-10256

HON. JOHN CORBETT O'MEARA

MAG. R. STEVEN WHALEN

FOUNDATION FOR
MICHIGAN FREEDOM'S
MOTION FOR LEAVE TO
FILE BRIEF AS AMICUS
CURIAE

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**FOUNDATION FOR MICHIGAN FREEDOM'S MOTION FOR LEAVE TO
FILE BRIEF AS AMICUS CURIAE**

Foundation for Michigan Freedom (the "Foundation"), by counsel, pursuant to Fed. R. Civ. P. 7 and L.R. 7.1, moves for leave to file the attached proposed brief as *amicus curiae*.

1. The Foundation is a nonprofit, nonpartisan organization recognized by the Internal Revenue Service as tax-exempt pursuant to Section 501(c)(3) of the Internal Revenue Code. A core mission of the Foundation is to undertake legal research projects in the public interest and to provide legal support in litigation designed to present positions on behalf of the public at-large on matters of public interest. In particular, the Foundation's core missions include nonpartisan research and analysis concerning fiscal responsibility.

2. The Plaintiffs in this case have characterized this matter as a First Amendment case; however, the case before this Court is not a First Amendment case. Using private resources, the

Plaintiffs are not restricted--in any manner whatsoever--by Section 57(3) of the Michigan Campaign Finance Act (the statute at issue here). What the Plaintiffs seek is for this Court to recognize a right that no other court has ever recognized: The absolute right of a public body, or a person acting on behalf of a public body, to use public resources to engage in political activity.

3. The case before this Court challenges the ability of the State of Michigan to determine how its subdivisions expend public resources. Whether the State of Michigan is unable to determine how its subdivisions expend public resources, is a fiscal responsibility issue of substantial consequence to the people of the State of Michigan.

4. “Generally, courts have exercised great liberality in permitting an amicus curiae to file a brief in a pending case. . . .” *In re Roxford Foods Litig.*, 790 F.Supp. 987, 997 (E.D. Cal. 1991) (quoting *United States v. Louisiana*, 751 F.Supp. 608, 620 (E.D. La. 1990)). “There are no strict prerequisites that must be established prior to qualifying for amicus status; an individual seeking to appear as amicus must merely make a showing that his participation is useful to or otherwise desirable to the court.” *Id.* Courts “frequently welcome amicus briefs from non-parties concerning legal issues that have potential ramifications beyond the parties directly involved or if the amicus has unique information or perspective that can help the court beyond the help that the lawyers from the parties are able to provide.” *Sonoma Falls Developers, L.L.C. v. Nev. Gold & Casinos, Inc.*, 272 F.Supp.2d 919, 925 (N.D.Cal. 2003) (quotation omitted). “[I]t is preferable to err on the side of granting leave.” *Neonatology Associates, P.A. v. C.I.R.*, 293 F.3d 128, 133 (3d Cir. 2002) (Alito, J.). Federal courts in this district and elsewhere have regularly granted motions for leave to file *amicus* briefs. See *American Council of Life Insurers v. Watters*, 536 F.Supp.2d 811, 814 n.1 & 824 (W.D. Mich. 2008) (granting AARP’s motion for leave to file an *amicus* brief); *Flagg v. City of Detroit*, 252 F.R.D. 346, 360 n.28 & 367 (E.D. Mich. 2008) (granting Detroit Free

Press' motion to file *amicus* brief).

5. In accordance with Local Rule 7.1, concurrence was requested and received from Defendants' counsel on February 1, 2016. The undersigned counsel has left messages to the Plaintiffs' counsel on February 1, 2016, but so far no communication has occurred.

WHEREFORE, for the foregoing reasons, the Foundation for Michigan Freedom respectfully requests leave of this Court to file an *amicus curiae* brief.

Respectfully submitted,

DOSTER LAW OFFICES, PLLC

s/Eric Doster

Eric Doster

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Michigan Freedom

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CERTIFICATE OF SERVICE

I hereby certify that on February 1, 2016, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing of the foregoing document as well as via US Mail to all non-ECF participants.

s/Eric Doster

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